

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ELIZABETH ANN PAKENAS, guardian
of PATTI ROGERS, a legally incapacitated
individual,

Plaintiff,

Case No. 05-60152

v.

Hon. John Corbett O'Meara
Hon. Virginia Morgan

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

**ORDER GRANTING IN PART AND DENYING
IN PART PLAINTIFF'S MOTION TO CORRECT THE RECORD**

Before the court is Plaintiff's motion to correct the record, filed May 10, 2010.

Defendant submitted a response on May 25, 2010; Plaintiff filed a reply brief on May 30, 2010.

Plaintiff seeks to include certain exhibits in the record on appeal – Plaintiff's Exhibits 1, 2, and 3, and Defendant's Exhibit CC. See Fed. R. App. P. 10(e) (allowing for correction or modification of the record by the district court). Plaintiff's Exhibits 1 and 3 were admitted into evidence at trial on March 10, 2009. See TR Vol. 4 at 10-11. To the extent Plaintiff needs to file these exhibits to make them available for the record on appeal, she may do so.

Plaintiff's Exhibit 2 and Defendant's Exhibit CC were not admitted into evidence at trial. Defendant objected to the admission of Plaintiff's Exhibit 2, which Plaintiff presented as the claim file. Defendant argued that Exhibit 2 was not the complete claim file. The court was concerned that "an undifferentiated pile of paper" would be presented to the jury and deferred a ruling, anticipating that the parties could stipulate to its admission. See TR Vol. 4 at 10-12, TR

Vol. 6 at 23-30. The court directed a verdict, however, before the parties could come to an agreement on Exhibit 2. It appears that Plaintiff has now presented excerpts of the original Exhibit 2 it sought to introduce at trial. Defendant objects that Plaintiff has included a report in this exhibit that was previously withdrawn at trial. Other than this document, the concerns raised by Defendant and the court at trial were based upon the form rather than the substance of Exhibit 2. In challenging this court's grant of a directed verdict at trial, Plaintiff should be able to show what evidence was proffered, albeit not admitted. Accordingly, the court will allow Plaintiff to file Exhibit 2, with the clarification that it was a proposed, but not admitted, exhibit at trial.

The record does not reflect that Defendant's Exhibit CC was offered or referred to at trial. If Plaintiff believes otherwise, she may provide a citation to the court. Otherwise, the court has no basis to allow the exhibit to be filed now.

Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion to correct the record is GRANTED IN PART and DENIED IN PART, consistent with this order.

s/John Corbett O'Meara
United States District Judge

Date: July 21, 2010

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, July 21, 2010, using the ECF system and/or ordinary mail.

s/William Barkholz
Case Manager